

Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 98

SENATE BILL 1161

AN ACT

AMENDING SECTIONS 20-342, 20-1541, 20-1549, 20-1550 AND 20-1556, ARIZONA
REVISED STATUTES; RELATING TO MORTGAGE GUARANTY INSURANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-342, Arizona Revised Statutes, is amended to read:

20-342. Scope and application of article

A. This article does not apply to:

1. Life insurance.

2. Disability insurance.

3. Reinsurance, except joint reinsurance as provided in section 20-369.

4. MORTGAGE GUARANTY INSURANCE.

~~4.~~ 5. Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than employers' liability, arising out of the ownership, maintenance or use of aircraft.

~~5.~~ 6. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

~~6.~~ 7. Insurance risks described in section 20-382, subsection A, paragraph 9.

B. Rates for the types of insurance included in section 20-382 are only subject to sections 20-381 through 20-399.

C. This section and sections 20-341 and 20-356 through 20-374 apply to workers' compensation and employers' liability insurance incident to and written in connection with workers' compensation on risks or operations in this state.

D. This section and sections 20-341 and 20-361 through 20-379 apply to title insurance on risks located in this state and to escrow services performed by a title insurer or title insurance agent as defined in section 20-1562. Those sections are designated as the title insurance rate regulatory provisions of this article and are the only sections of this article that apply to title insurance.

Sec. 2. Section 20-1541, Arizona Revised Statutes, is amended to read:

20-1541. Definitions

In this article, unless the context otherwise requires:

1. "Authorized real estate security" means either:

(a) Any amortized note, bond or other evidence of indebtedness that is secured by both a mortgage, deed of trust or other instrument that constitutes or is equivalent to a first lien or charge on real estate and the balance on any pledged cash account or collateralized guaranty agreement that is contracted for by a parent, blood relative, employer or nonprofit corporation for the benefit of the borrower if all of the following apply:

(i) The loan amount does not exceed one hundred THREE per cent of the fair market value of the combined security at the time that the loan is made WHERE ANY PERCENTAGE GREATER THAN ONE HUNDRED PER CENT IS USED TO FINANCE FEES AND CLOSING COSTS ON THE INDEBTEDNESS.

1 (ii) The pledged cash account or collateralized guaranty agreement
2 does not exceed thirty-five per cent of the fair market value of the real
3 estate at the time the loan is made.

4 (iii) The lender has a first position lien on the pledged cash account
5 or collateralized guaranty agreement.

6 (iv) The loan amount does not exceed the fair market value of the real
7 estate at the time the loan is made PLUS THREE PER CENT FOR FINANCING FEES
8 AND CLOSING COSTS.

9 (v) The requirements of subdivision (b) of this paragraph are met.

10 (b) Any amortized note, bond or other evidence of indebtedness that
11 does not exceed one hundred THREE per cent of the fair market value of the
12 real estate and that is secured by any mortgage, deed of trust or other
13 instrument that constitutes, or is equivalent to, a first lien or charge on
14 real estate if:

15 (i) The real estate loan secured in such manner is one of a type which
16 a bank, a savings and loan association or an insurance company, which is
17 supervised and regulated by a department of this state or an agency of the
18 federal government, is authorized to make, or would be authorized to make,
19 disregarding any requirement applicable to such an institution that the
20 amount of the loan not exceed a certain percentage of the value of the real
21 estate.

22 (ii) The improvement on such real estate is a building or buildings
23 designed for occupancy as specified by paragraph 4, subdivisions (a) and (b)
24 of this section.

25 (iii) The lien on such real estate may be subject to and subordinate
26 to the lien of any public bond, assessment or tax, when no installment, call
27 or payment of or under such bond, assessment or tax is delinquent, or to any
28 outstanding mineral, oil, water or timber rights, rights-of-way, easements
29 or rights-of-way of support, sewer rights, building restrictions or other
30 restrictions or covenants, conditions or regulations of use or outstanding
31 leases upon such real property under which rents or profits are reserved to
32 the owner of such real property.

33 2. "Contingency reserve" means an additional premium reserve
34 established to protect policyholders against the effect of adverse economic
35 cycles.

36 3. "Minimum policyholder position" means the amount computed pursuant
37 to section 20-1550.

38 4. "Mortgage guaranty insurance" means insurance against financial
39 loss by reason of nonpayment of:

40 (a) Principal, interest or other sums agreed to be paid under the
41 terms of any note or bond or other evidence of indebtedness secured by a
42 mortgage, deed of trust or other instrument constituting a lien or charge on
43 real estate if the improvement on such real estate is a residential building
44 or a condominium unit or buildings designed for occupancy by not more than
45 four families.

(b) Principal, interest or other sums agreed to be paid under the terms of any note, bond or other evidence of indebtedness secured by a mortgage, deed of trust or other instrument constituting a lien or charge on real estate if the improvement on such real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes.

(c) Rent or other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate if the improvement on such real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

5. "Policyholder position" means the contingency reserve prescribed in section 20-1556 and surplus as regards policyholders.

Sec. 3. Section 20-1549, Arizona Revised Statutes, is amended to read: 20-1549. Policy forms and premium rates filed

A. A PERSON SHALL FILE all policy forms, and endorsements shall be filed AND RATES A MORTGAGE GUARANTY INSURER PROPOSES TO USE with and be subject to the approval of the director. With respect to owner-occupied, single-family dwellings, the mortgage guaranty insurance policy shall provide that the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.

~~B. The rate to be charged and the premium, including all modification of rates and premiums to be paid by the policyholder, shall be filed with and be subject to the approval of the director.~~

B. EACH RATE FILING SHALL BE ON FILE FOR A WAITING PERIOD OF FIFTEEN DAYS BEFORE IT BECOMES EFFECTIVE. EACH POLICY FORM OR ENDORSEMENT FILING SHALL BE ON FILE FOR A WAITING PERIOD OF THIRTY DAYS BEFORE THE INSURER MAY DELIVER OR ISSUE FOR DELIVERY IN THIS STATE THE POLICY FORM OR ENDORSEMENT.

C. Each mortgage guaranty insurance company shall adopt, print and make available a schedule of premium charges for mortgage guaranty insurance policies. Premium charges made pursuant to the provisions of this article shall not be deemed to be interest or other charges under any other provision of law limiting interest or other charges in connection with mortgage loans. The schedule shall show the entire amount of premium charge for each type of mortgage guaranty insurance policy issued by the insurance company.

Sec. 4. Section 20-1550, Arizona Revised Statutes, is amended to read: 20-1550. Minimum policyholder position; definitions

A. A mortgage guaranty insurer shall maintain at all times a minimum policyholder position in an amount not less than the amount required by this section. The face amount of the mortgage shall include reinsurance assumed and shall be calculated net of reinsurance THAT IS ceded to an insurer that is EITHER:

1. Authorized to transact insurance or accredited to assume reinsurance in this state, or as

2. PURSUANT TO SECTION 20-1557, SUBSECTION C.

3. Otherwise approved by the director. However, ~~the face amount of the mortgage shall not be reduced by reinsurance ceded to a domestic, foreign or alien captive insurer.~~

B. If a policy of mortgage guaranty insurance insures individual loans with a percentage claim settlement option on the loans, the insurer shall maintain a minimum policyholder position based on each one hundred dollars of the face amount of the mortgage, the percentage coverage or claim settlement option and the loan-to-value category. The required amount of minimum policyholder position is calculated in the following manner:

1. If the total indebtedness is greater than seventy-five per cent of the value of the collateral property at the date of insurance, the following applies:

Per cent Coverage	Minimum policyholder position per one hundred dollars of the face amount of the mortgage
5%	\$.20
10	.40
15	.60
20	.80
25	1.00
30	1.10
35	1.20
40	1.30
45	1.35
50	1.40
55	1.50
60	1.55
65	1.60
70	1.65
75	1.75
80	1.80
85	1.85
90	1.90
95	1.95
100	2.00

If the per cent coverage is between any five percentage point increment, the factor for minimum policyholder position per one hundred dollars of the face amount of the mortgage shall be prorated.

2. If the total indebtedness is at least fifty per cent and not more than seventy-five per cent of the value of the collateral property at the date of insurance, the required amount of minimum policyholder position is fifty per cent of the amount required by paragraph 1 of this subsection.

3. If the total indebtedness is less than fifty per cent of the value of the collateral property at the date of insurance, the required amount of

1 minimum policyholder position is twenty-five per cent of the amount required
2 by paragraph 1 of this subsection.

3 C. If a policy of mortgage guaranty insurance provides coverage on a
4 pool of loans subject to an aggregate loss limit and if the equity:

5 1. Is not more than fifty per cent and not less than twenty per cent,
6 or equity plus any prior insurance or a deductible equals twenty-five per
7 cent of the value of the collateral property at the date of insurance, the
8 required amount of minimum policyholder position is calculated as follows:

Per cent Coverage	Minimum policyholder position per one hundred dollars of the face amount of the mortgage
1%	\$.30
5	.50
10	.60
15	.65
20	.70
25	.75
30	.775
40	.80
50	.825
60	.85
70	.875
75	.90
80	.925
90	.95
1.00	1.00

9 If the per cent coverage is between any specified increment, the factor for
10 minimum policyholder position per one hundred dollars of the face amount of
11 the mortgage shall be prorated.

12 2. Is less than twenty per cent or the equity plus prior insurance or
13 a deductible is less than twenty-five per cent of the value of the collateral
14 property at the date of insurance, the required amount of minimum
15 policyholder position is two hundred per cent of the amount required by
16 paragraph 1 of this subsection.

17 3. Is more than fifty per cent or the equity plus prior insurance or
18 a deductible is more than fifty-five per cent of the value of the collateral
19 property at the date of insurance, the required amount of minimum
20 policyholder position is fifty per cent of the amount of minimum policyholder
21 position required by paragraph 1 of this subsection.

22 D. If a policy of mortgage guaranty insurance provides for layers of
23 coverage, deductibles or excess reinsurance, the required amount of minimum
24 policyholder position may be computed by subtracting the required minimum
25 policyholder position for the lower percentage coverage limits from the

1 required minimum policyholder position for the upper or greater coverage
2 limit.

3 E. If a policy of mortgage guaranty insurance provides for coverage
4 on loans secured by second liens:

5 1. If the policy provides coverage on individual loans, the required
6 amount of minimum policyholder position is calculated according to subsection
7 B after the per cent of coverage and the loan-to-value ratios have been
8 determined as follows:

9 (a) Divide the insured portion of the second loan by the entire loan
10 indebtedness on the collateral property to determine the per cent coverage.

11 (b) Divide the entire loan indebtedness on the property by the value
12 of the collateral property at the date of insurance to determine
13 loan-to-value per cent.

14 2. If the policy provides coverage on a group of loans subject to an
15 aggregate loss limit, the minimum policyholder position is calculated
16 according to subsection C after the per cent of coverage and the
17 loan-to-value ratios have been determined in accordance with this subsection.

18 F. If a policy of mortgage guaranty insurance provides for coverage
19 on leases, the minimum policyholder position is four dollars for each one
20 hundred dollars of the insured amount of the lease.

21 G. If a mortgage guaranty insurer does not have the amount of minimum
22 policyholder position required by this section, it shall cease transacting
23 new business until such time that its minimum policyholder position is in
24 compliance with this section.

25 H. A mortgage guaranty insurer shall include with its annual statement
26 a report of its minimum policyholder position on a form approved by the
27 director.

28 I. For the purposes of this section, except as otherwise provided:

29 1. "Equity" means the complement of the loan-to-value per cent.

30 2. "Face amount of the mortgage" means the outstanding principal
31 balance computed without any reduction because of an insurer's option
32 limiting its coverage, except that for the purposes of determining a minimum
33 policyholder position under subsection E "face amount of the mortgage" means
34 the entire loan indebtedness on the property.

35 Sec. 5. Section 20-1556, Arizona Revised Statutes, is amended to read:
36 20-1556. Contingency reserve

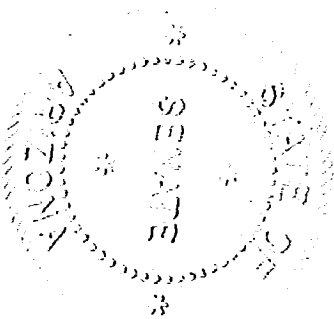
37 A. In addition to the paid in capital and surplus provided in section
38 20-1542 each mortgage guaranty insurer shall establish a contingency reserve
39 after establishment of the unearned premium reserve. The mortgage guaranty
40 insurer shall annually contribute to the contingency reserve an amount which
41 in the aggregate is the greater of either fifty per cent of the NET earned
42 premium or the minimum policyholder position required by section 20-1550
43 divided by ten. The annual contributions to the contingency reserve made
44 during each calendar year shall be maintained for a period of one hundred
45 twenty months, except that withdrawals may be made by the insurer in any year

1 in which the actual incurred losses AND LOSS EXPENSES exceed thirty-five per
2 cent of the corresponding NET earned premiums, and these releases shall not
3 be made without prior approval by the director of insurance of the insurer's
4 state of domicile.

5 B. In addition to withdrawals made pursuant to subsection A of this
6 section, with the prior approval of the director or commissioner of the
7 department of insurance of the insurer's state of domicile, the mortgage
8 guaranty insurer may withdraw from the contingency reserve an amount that is
9 not more than the amount by which the policyholder position exceeds the
10 minimum policyholder position prescribed in section 20-1550. The mortgage
11 guaranty insurer shall provide or identify any information, analysis and
12 other necessary documentation that supports the request submitted to the
13 director or commissioner.

APPROVED BY THE GOVERNOR APRIL 29, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2002.



Passed the House April 23, 2002,

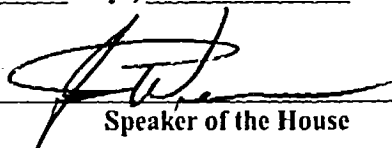
Passed the Senate March 25, 2002,

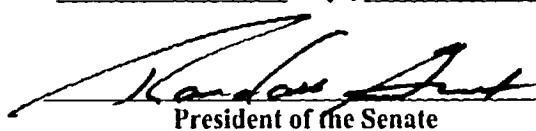
by the following vote: 53 Ayes,

by the following vote: 29 Ayes,

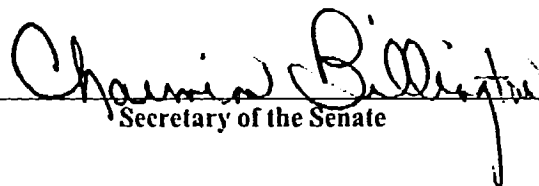
0 Nays, 7 Not Voting

0 Nays, 1 Not Voting


Speaker of the House


President of the Senate


Chief Clerk of the House

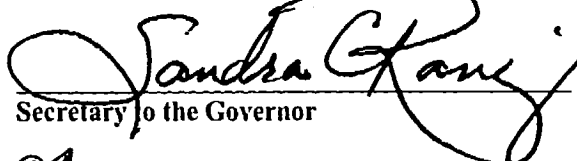

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24 day of April, 2002,

at 12:14 o'clock P M.


Secretary to the Governor

Approved this 29 day of

April, 2002

at 1:02 o'clock P M.

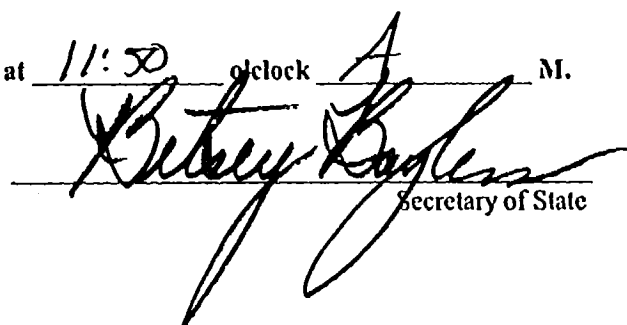

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30 day of April, 2002,

at 11:50 o'clock A M.


Secretary of State

S.B. 1161